

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

CLAIM NO. SVGHPB2014/0001

IN THE MATTER OF THE ESTATE OF DAVID GEORGE

THELMA GEORGE ET AL

CLAIMANTS

AND

SUZETTE GRANT - HINDS

DAVID BROWNE

BERISFORD PHILLIPS

DEFENDANTS

Appearances: Mrs. Samantha Robertson of Counsel for Claimants

Mr. Richard Williams and Ms. Danielle France of Counsel for Defendants

ORAL JUDGMENT

2017: March 1

(1) David George also known as "Sheen" died on 14th January 2013. He left a will in which he named his daughter, Suzette Grant-Hinds, as executrix and the sole beneficiary of all of his assets. His wife, Thelma George, and the other seven of his children challenged the validity of the will. The Claimants would have all benefitted from Sheen's estate, if he had died intestate.

[2] The claimants are asking the court to order that the Grant of Probate of the will be revoked; a declaration that "the purported will of David George dated 2nd November 2012 is fraudulent, invalid, null and void"; and injunction to restrain the first defendant from selling the assets of the estate; to order that letters of administration of the estate be granted to the first claimant, to cancel the distribution of the assets, special damages to the estate for "including fraud on the title of the property of the deceased and loss of rental income", damages and costs.

(3) The case for the claimants that the will was a "forgery and was obtained by fraud" rested on two limbs - (1) the will itself was invalid in that it was not signed by the alleged testator, Sheen, and



even if signed by him it was not witnessed in conformity with section 12 of the Wills Act in that both witnesses were not present when he signed the will; the signature on the will was not the true signature of the deceased, David George and (2) at the time the will was executed he was of ill health and severely impaired motor skills. He was too ill to sign the will in that he was confined to bed on the day he is alleged to have signed the will and he was too "shaky and nervy" to hold a pen to form his signature.

[4] Much was made of the fact that the will contained an attestation clause that was not applicable to the will in that it was the attestation which should have been used for the will of a blind person and not one where the testator was not blind and who was signing his will. I will deal with this aspect of the case later.

[5] The defendants' defence was that David George did in fact sign the will in the presence of both witnesses.

THE WILL

[Read section 12 Wills Act]

[6] The claimants submitted that the fact that the attestation was that of a blind testator when in fact the testator was not blind went to the validity of the will. I have to disagree with this submission. It is noted that the Wills Act provides that "no form of attestation shall be necessary". It may have been different if the testator had made his mark rather than signed his name. In the circumstances the attestation was mere surplusage and the fact that the wrong attestation clause was appended to the will in no way invalidates the will. I find that the will conformed in all respects with the Wills Act.

[7] In **Motor & General Insurance Co. Ltd. v Peterson Modeste** George-Creque, JA made the point that,

*"Notwithstanding the fact that CPR does not contain a specific rule with regard to the manner in which allegations of fraud are to be pleaded, the principle that where an allegation of fraud is made particulars must be given, is a long and well settled principle which does not require restating in CPR for giving it force. In **East Caribbean Flour Mills Limited v Ormiston Ken Boyea**, a post CPR*

*decision of this court, Barrow JA, in delivering the judgment of the court cited with approval paragraph 51 of the judgment of Lord Hope of Craighead in **Three Rivers** in which Lord Hope said this: "..... as a general rule; the more serious the allegation of misconduct, the greater is the need for particulars to be given which explains the basis for the allegations. This is especially so where the allegation being made is of bad faith or dishonesty. The point is well established by authority in the case of fraud."*

In this case the "particulars of fraud" stated are not particulars at all.

EVIDENCE

- [8] Having observed the witnesses as they gave their oral testimony, I formed the impression that the evidence of Thelma George was not reliable. The witness was not consistent about the condition of her husband on his return to St Vincent from Trinidad on 30th October 2012. In her witness statement [para 10] she says that "when we went to Trinidad it was the lowest state my husband was, he was extremely weak, had no control of his co-ordination, hand movement and mobility". "11. When we returned from Trinidad my husband could not hold anything in his hand whether to eat or to drink without assistance. This continued until about the 10th December 2012." "13. On the 2nd November 2012 when it is being said that my husband made a will my husband was immobile at my home just having arrived from Trinidad ... I was at home with my husband nursing him back to health. He was hardly eating, extremely weak and lacked mobility. My husband did not leave our home on 2nd day of November because he was too weak and incapable of doing so without help".
- [9] In cross examination Mrs. George said that "He could walk when I took him to Trinidad but I had to assist him". She seemed to have changed her position when she answered, "He could have gone to Kingstown on 2nd November 2012 but I would be shocked if he went to Kingstown because he was honest and open - that is why I am saying if he had signed a will, he would have told me about it - the mere fact that he did not tell me, he didn't sign it". In cross examination she indicated her husband was bedridden for about a week. She said however that she took her husband to the doctor Adams on 31st October, the day after he returned from Trinidad. Mrs. George brought no evidence to support her story as to her husband medical conditions. And no convincing evidence that her husband was home with her all day 2nd November. None of her witnesses talked to Sheen not leaving home at Stubbs all day 2nd November.

(10] I find that the medical evidence contradicts Mrs George's assertion. Dr Adams' report was deafeningly silent on the symptoms of immobility. "shaky and nervy", not being able to hold a pen. I note too that the doctor reported that, "The patient then traveled to Trinidad where he was reviewed by an urologist and a nephrologist. ...No surgical action was reportedly necessary with respect to his renal calculus and prostate disease." The report also indicated that "on examination he had normal gait and was able to walk unaided and unassisted. And on 15th December 2012 at which time despite his renal disease, the patient remained ambulant with no obvious visual impairment and no obvious compromise to his mentation. However, sometime afterwards his condition deteriorated and he was advised to seek in-patient care at the Milton Memorial Hospital'. This account of Sheen's condition flies in the face of the description of Mrs. George. I note particularly that Dr. Adams reported that Sheen was reviewed in Trinidad and there was no surgical action taken or deemed necessary. In the face of the medical report, Mrs. George's account is not credible.

[11] The evidence of Sharon Grant was totally discredited on cross examination. She herself contradicted her evidence in chief as contained in her witness statement. On key points she contradicted herself. For example, [Para 5 and 14]. She would like the court to believe that she could not remember the date she was knocked down by a vehicle that conveniently destroyed her cell phone with which she had taped a conversation with one of the witnesses to the will, but she could remember that she visited her father on the afternoon of 2nd November. I did not find her a credible witness.

[12] The key evidence of the claimants' case was the knowledge Mrs. Thelma George had of her husband. She summed up her testimony in cross examination, Kingstown because he was honest and open- that is why I am saying if he had signed a will, he would have told me about it - the mere fact that he did not tell me, he didn't sign it"

1. Silbert George, the third witness was not helpful.
2. I accept the evidence of David Browne, Berisford Phillips and Suzette Grant-Hinds as truthful.

FINDINGS OF FACT

[13] My findings of fact are as follows -

1. David George signed the will on 2nd November 2012. at the office of Berisford Phillips
2. David George signed the will in the presence of Phillips and Browne in the presence of each other and the testator.
3. For what it is worth, David George was not blind - everybody agreed on that point
4. He was fully capable of signing the will. He was not so ill that he could not. He was not shaky and nervy that he could hold a pen.
5. No fraud established
6. I find that the signature on the will is similar to the signature in the passport id page exhibited. If anything, the exhibit supported the case that the will was signed by the testator. [P53 para 17

CONCLUSION

[14] It is settled that allegations of fraud must be strictly proved. In this case the claimants have come woefully short of proving fraud. The claimants fell woefully short of proving that the will was a forgery or that it was invalid as not being in conformity with the Wills Act. They failed to prove that the testator could not have signed the will because he was so ill - could not hold pen or in any case confined to bed.

ORDER

[15] I therefore order as follows -

1. The claim against the defendants is dismissed
2. Prescribed costs based on a value of \$50,000.00 amounting to \$7,500.00 to be paid by the claimants to the defendants.

Sir Clare K. Roberts, QC
High Court Judge (Ag)